IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.V.K.BALI
&
THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

TUESDAY, THE 19TH DECEMBER 2006 / 28TH AGRAHAYANA 1928

WA.No. 1353 of 2006(A)

AGAINST THE JUDGEMENT IN OP.11102/2003 Dated 03/04/2006
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APPELLANTS: RESPONDENTS
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1. BHARATH PETROLEUM CORPORATION LTD.,
REPRESENTED BY ITS CHAIRMAN,
BHARATH BHAVAN, MUMBAI.

2. THE DEPUTY GENERAL MANAGER,
BHARATH PETROLEUM CORPORATION LTD.,
IITH CROSS ROAD, RENGANATHA GARDEN,
ANNA NAGAR, CHENNAI.

3. THE TERRITORY MANAGER,
BHARATH PETROLEUM CORPORATION LTD.,
KOCHUVELI, TRIVANDRUM-7.

BY ADV. SRI.ANTONY DOMINIC
SRI.A.M.SHAFFIQUE
SRI.E.K.NANDAKUMAR
SRI.A.K.JAYASANKAR NAMBIAR

RESPONDENTS: PETITIONER

T.PADMAKUMARI AMMA,
SREEJA VILASOM, SARKARA, CHIRAYINKEEZHU,
ATTINGAL.

BY ADV. SRI.T.R.RAMACHANDRAN NAIR

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 1/12/2006,
THE COURT ON 19/12/2006, DELIVERED THE FOLLOWING:

V.K. Bali, C.J. & S. Siri Jagan, J.

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W. A. No. 1353 of 2006

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Dated this, the December, 2006.

J U D G M E N T

Siri Jagan, J.

Smt. T. Padmakumari Amma, widow of late Sasidharan Nair, an employee of the Bharath Petroleum Corporation Ltd., has approached this Court for appointment for her daughter Smt. P.S. Sreeja in a suitable post under the dying in harness scheme of the Company consequent on the death of the said Sasidharan Nair, who was an employee of Bharat Petroleum Corporation, died in harness. Needless to say, the Company refused to grant the request of the petitioner, whereupon the petitioner approached this Court with the original petition, judgment in which allowing the claim of the petitioner in the original petition is under challenge in this writ appeal at the instance of the Bharat Petroleum Corporation Ltd., and its officers.

2. The learned Single Judge took note of the fact that in Ext. P14 counter affidavit filed before the High Court of Madras, the Company took one stand and they shifted the stand in the present original petition, which, according to the learned Single Judge, would be unjustifiable if not contumacious. In view of the judgment we propose to pass in this writ appeal, we do not think it necessary to delve into all the facts narrated in the original petition and the counter affidavit. Suffice it to note that late Sasidharan Nair was an employee who died while in service, that Smt. P.S. Sreeja is his daughter and that there is a scheme framed by the 1st appellant-Company which provides for employment to dependents of employees who died while in service. It is also an admitted fact that consequent on the death of Sasidharan Nair, the respondent had received amounts by way of terminal benefits, which, according to the

appellants, come to Rs. 14 lakhs and the widow is getting Rs. 7,314/- p.m. towards superannuation payments. Of course, the respondent has a case that out of the said Rs. 14 lakhs, an amount of Rs. 2 lakhs has been deducted as recoveries. The question now posed before us is as to whether the receipt of such huge amounts by way of terminal benefits would disentitle the dependents of the deceased employee from claiming the benefit under the scheme for compassionate appointment by the 1st appellant-Company. Both sides rely on Supreme Court judgments on the subject. Therefore, we need only consider whether which of the Supreme Court decisions would be applicable to the present case.

3. Counsel for the respondent relies upon the decisions of Balbir Kaur and another v. Steel Authority of India Ltd. & others, [(2006)6 SCC 493] and Govind Prakash Verma v. Life Insurance Corporation of India & others, [(2005) 10 SCC 289]. The appellants rely on the later decision of the Supreme Court in Union Bank of India & others v. M.T. Latheesh, 2006 AIR SCW 4626.

4. In Balbir Kaur's case (supra) the Supreme Court held that family benefit scheme assuring monthly payment of family of deceased employee was not a substitute for compassionate appointment. Again, in Govind Prakash Verma's case (supra) the Supreme Court in paragraph 6 held as follows:

> "6. In our view, it was wholly irrelevant for the departmental authorities and the learned Single Judge to take into consideration the amount which was being paid as family pension to the widow of the deceased (which amount, according to the appellant, has not been reduced to half) and other amounts paid on account of terminal benefits under the Rules. The scheme of compassionate appointment is over and above whatever is admissible to the legal representatives of the deceased employee as benefits of service which one gets on the death of the employee. Therefore, compassionate appointment cannot be refused on the ground that any member of the family received the amounts admissible under the Rules. So far as the question

> of gainful employment of the elder brother is concerned, we find that it had been given out that he has been engaged in cultivation. We hardly find that it could be considered as gainful employment if the family owns a piece of land and one of the members of the family cultivates the field. This statement is said to have been contradicted when it is said that the elder brother had stated that he works as a painter. This would not necessarily be a contradiction much less leading to the inference drawn that he was gainfully employed somewhere as a painter. He might be working in his field and might casually be getting work as painter also. Nothing has been indicated in the enquiry report as to where he was employed as a regular painter. The other aspects, on which the officer was required to make enquiries, have been conveniently omitted and not a whisper is found in the report submitted by the officer. In the above circumstances, in our view, the orders passed by the High Court are not sustainable. The respondents have wrongly refused compassionate appointment to the appellant. The inference of gainful employment of the elder brother could not be acted upon. The terminal benefits received by the widow and the family pension could not be taken into account."

On the strength of these decisions, counsel for the respondent would submit that even though it is a fact that the respondent has received an amount in excess of Rs. 10 lakhs as terminal benefits on the death of her husband and she was in fact receiving Rs. 7,314/- per month towards superannuation benefits, the same is not substitute for compassionate appointment and the dependents of the deceased cannot be denied the benefit of compassionate appointment scheme simply because the dependents have received such benefits on the death of the bread winner of the family.

5. In M.T. Latheesh's case (supra), the Supreme Court recapitulated the various decisions of the Supreme Court on the question of compassionate employment and ultimately came to the conclusion that compassionate appoint being the exception to the general rule, appointment could be given only in warranting situations and circumstances existing in granting appointments and guiding factors should be the financial condition of the family on the death of

the employee. The Supreme Court also distinguished the decision in Balbir Kaur's case. In M.T. Latheesh's case, the dependents of the deceased employee was paid terminal benefits to the tune of Rs. 5,47,495/- and a pension of Rs. 4,468/- per month. The Court found that monthly interest income on terminal benefits coupled with pension yield monthly income which was much more than the last drawn net monthly salary of the deceased employee and therefore the applicant is not eligible for compassionate employment on financial parameters. In that view, the Supreme Court upheld the rejection of the application of the dependent for compassionate employment setting aside the judgment of the High Court.

6. We have considered the judgments cited before us. All the three are decisions rendered by Benches consisting of two Judges and in the latest of the same, namely, M.T. Latheesh's case, one of the earlier decisions relied on by the respondent is distinguished also. Therefore, we are of opinion that later decision of the Supreme Court in M.T. Latheesh's case would be the appropriate one to be followed by us in this case. Further, the Supreme Court has, time and again, held that compassionate appointment is not a matter of absolute right, but it would necessarily depend upon the financial condition of the family on the death of the bread winner of the family. In M.T. Latheesh's case, the Supreme Court had noted the following passage in the decision of Umesh Kumar Nagpal v. State of Haryana and others, [(1994) 4 SCC 138] as thus:

> "The whole object of granting compassionate employment is to enable the family, to tide over the sudden crisis. The object is not to give a member of such family a post much less a post for post held by the deceased. What is further, mere death of an employee in harness does not entitle his family to such source of livelihood. The Government or the public authority concerned has to examine the financial condition of the family of the deceased and it is only if it is satisfied, that but for the provision of

> employment, the family will not be able to meet the crisis that a job is to be offered to the eligible member of the family. The posts in classes III and IV are the lowest posts in non manual and manual categories and hence they alone can be offered on compassionate grounds, the object being to relieve the family, of the financial destitution and to help it get over the emergency."

7. Further, we also note that the Company had, by Ext. R1(b), reviewed its earlier policy of granting compassionate employment. In that, the Company had found that it is not possible to accommodate the request for compassionate employment in all cases and therefore with a view to alleviate financial hardship of the families of the deceased employees due to sudden loss of the earning member of the family, it has been decided to grant one time lump sum payment to the nominee/legal heirs of the deceased employees amounting to Rs. 5 lakhs in case of death other than by accident and in the case of death due to accident lump sum payment of Rs. 50,000/- and that with the introduction of the above said lump sum payment and relaxation in eligibility criteria regarding the membership of the Post Retirement Medical Benefits Scheme, no employment on compassionate grounds would be offered to the dependents of the deceased employee. They have also produced Ext.R1(a) which shows the payments made to the legal heirs on the death of Sasidharan Nair. That would show a total payoment of Rs. 16,11,404/- from which an amount of Rs. 2,12,696/- has been recovered on account of the various loans outstanding against the deceased and income tax. As such, the facts of this case are more identical to those in Latheesh's case as there also, there was a change in the scheme somewhat to the same effect.

8. In the above circumstances, we are unable to countenance the claim of the respondent for compassionate employment for her daughter. The Supreme Court in Latheesh's case found that payment of terminal benefits to the tune of Rs. 5,47,495/- and pension of Rs.

4,468/- p.m. would disentitle the dependents for compassionate employment. In this case, about Rs. 14 lakhs have been given to the respondent as separation benefit and she was also receiving Rs. 7,314/- p.m., which would be more than double of what the dependents of the deceased of Latheesh's case got. Therefore, this is certainly not a case where the dependents of the deceased is in a sudden financial crisis. Going by the observations of the Supreme Court in Umesh Kumar Nagpal's case, we are unable to fathom a situation whereby but for the provision of employment the family of the respondent would not be able to meet the crisis in the family because of the death of their bread winner. Therefore, notwithstanding the earlier contradictory stand taken before the Madras High Court, we are more than satisfied that this is a case where this Court should not interfere with the decision of the appellants in the matter of rejecting the claim for compassionate employment to the daughter of the deceased as claimed by the respondent.

In the above circumstances, we allow the writ appeal, set aside the judgment of the learned Single Judge and dismiss O.P.No. 11002/2003.

V.K. Bali, Chief Justice.

S. Siri Jagan, Judge.

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